

February 28, 2011

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Via E-file

Ms. LaDonna Castañuela
Office of the Chief Clerk (MC-105)
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

Re: Docket No. 2010-0994-DIS, Green Valley SUD

Dear Ms. Castanuela:

Please find enclosed the Reply of Zipp Meadows, LLC, to the Responses of the Executive Director, Public Interest Counsel, and Applicant to Request for Hearing.

Very truly yours,



David F. Brown

DFB:ls

Enclosure

cc: Service List

TCEQ DOCKET NO. 2010-0994-DIS

APPLICATION OF GREEN	§	BEFORE THE TEXAS COMMISSION
VALLEY SPECIAL UTILITY	§	
DISTRICT FOR APPROVAL OF	§	ON ENVIRONMENTAL QUALITY
IMPACT FEES IN GUADALUPE,	§	
COMAL AND BEXAR COUNTIES,	§	
TEXAS	§	

**REPLY OF ZIPP MEADOWS, LLC,
TO THE RESPONSES OF THE EXECUTIVE DIRECTOR,
PUBLIC INTEREST COUNSEL, AND APPLICANT
TO REQUEST FOR HEARING**

TO THE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

As the Executive Director of the Commission and Public Interest Counsel (“OPIC”) have confirmed, Zipp Meadows, LLC (“Zipp Meadows”) timely and properly submitted a request for a hearing (the “Zipp Meadows Request”) on its objection to the Green Valley Special Utility District (“GVSUD”) Application for Impact Fee (“Application” and “Impact Fees,” as appropriate). Applicant, Green Valley Special Utility District’s Response (“GVSUD”), mischaracterizes the Zipp Meadows Request and fails to recognize both the impropriety of the Application and the basis of the Zipp Meadows Request. The Zipp Meadows Request for hearing should, therefore, be granted.

I. INTRODUCTION

As the Executive Director’s response and its attachments indicate, GVSUD submitted its Application for approval to increase its Impact Fees for water service (not including wastewater service) from \$1,600 to \$4,642 per equivalent single-family connection on a five-year, phased-in basis on or about September 23, 2009. Notice issued and was sent on or about May 16, 2010 (“TCEQ Notice”). Both the City of New Braunfels, Texas, and Zipp Meadows timely submitted requests for hearing that substantially complied with the Commission’s rules and the terms of the TCEQ Notice. Both the Executive Director and OPIC agree that Zipp Meadows has demonstrated the right to a hearing. GVSUD agrees in most respects, but contends that the Zipp

Meadows's interest—as GVSUD has mischaracterized it—is insufficient to support a request for hearing.

II. ARGUMENT AND AUTHORITIES

As Commission rules require and the TCEQ Notice provides, the Zipp Meadows Request:

- (a) Sets out the name, address, and daytime telephone number for Zipp Meadows and its representative, Rick Shumake;
- (b) Provides the name of the applicant and the TCEQ Internal Control Number for the GVSUD Application;
- (c) Requests a contested case hearing; and
- (d) Identifies how Zipp Meadows' would be affected by the Application in a way not common to the general public (*i.e.*, that Zipp Meadows owns property within GVSUD that it intends to develop that would be subject to the proposed Impact Fees proposed in the Application, which are unreasonable, unlawful, and designed in such a manner as to cause development within GVSUD to fail).

See 30 TAC §55.251(c) and the TCEQ Notice.

To respond to GVSUD's mischaracterization of the Zipp Meadows Request, Zipp Meadows contends that: (a) the proposed Impact Fees fail to comply with the requirements of Chapter 395 of the Texas Local Government Code, or the Commission's Chapter 293, Subchapter N rules, by including unauthorized or excessive costs that cause a direct and undue impact upon landowners and developers within the boundaries of the GVSUD, such as Zipp Meadows, and otherwise failing to comply with applicable law and Commission rules; and (b) the Impact Fees are improperly structured and are not being proposed to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to the new development, but for other purposes. See TEX. LOC. GOV'T CODE §§395.080(b); *see also*, 30 TAC §§293.171-.176.

Zipp Meadows's interest in this proceeding is in ensuring that any impact fee applicable to the development of its property within GVSUD is reasonable, equitable, and necessary as a mechanism for GVSUD to finance improvements to serve its designated service area. 30 TAC §293.174(a). Commission rules define an "affected

person” as “one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application.” 30 TAC §55.256(a). In conformity with 30 TAC §55.256(c), as a developer of real property within the boundaries of the GVSUD to which the Application proposes to apply the new Impact Fees, (1) Zipp Meadows has a lawful, protected interest in a determination of whether GVSUD’s Impact Fee comports with applicable law and regulations (subsection (1)); and (2) Zipp Meadows’s ability to operate as a developer is directly and substantially affected by the propriety and level of costs levied against property as a precondition to development (subsections (3), (4)). *Id.*

For instance, while procedures available under Commission and State Office of Administrative Hearings rules for evaluating GVSUD’s Application in a contested case proceeding will make evaluation of the propriety of the Impact Fees more complete, even on its face, GVSUD appears to seek recovery of costs not permitted under applicable law. Further, GVSUD’s calculation of its fees appears improper under Commission rules. Each of these and other improprieties in GVSUD’s Application will make development of Zipp Meadows and any other new development within the boundaries of GVSUD more difficult or impossible.

GVSUD’s contention that Zipp Meadows has failed to show a justiciable interest as an affected person is simply wrong.

III. CONCLUSION

30 TAC §55.255(b) provides that “a request for a contested case hearing shall be granted if the request is:

- (2) made by an affected person if the request:
 - (A) complies with the requirements of §55.251 of [Title 30] (relating to Requests for Contested Case Hearing, Public Comment);
 - (B) is timely filed with the chief clerk; and
 - (C) is pursuant to a right to hearing authorized by law . . .

Id. The Responses of both the Executive Director and OPIC conclude that Zipp Meadows has met the entirety of this standard. GVSUD agrees with the Executive Director and OPIC on most points, but mischaracterizes Zipp Meadows’s Request to

claim that it has not demonstrated that it is an "affected person." A fair reading of the Zipp Meadows Request and this Reply demonstrate that Zipp Meadows is an affected person entitled to a hearing on GVSUD's Application. Accordingly, Zipp Meadows respectfully requests that the Commission grant its request for a contested case hearing on the Application and that it have such other and further relief to which it may show itself justly entitled.

Respectfully submitted,



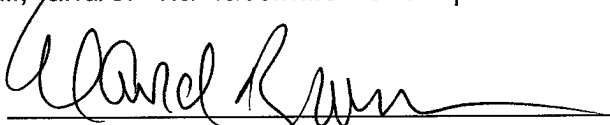
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CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of February, 2011, a true and correct copy of the REPLY OF ZIPP MEADOWS, LLC, TO THE RESPONSES OF THE EXECUTIVE DIRECTOR, PUBLIC INTEREST COUNSEL, AND APPLICANT TO REQUEST FOR HEARING was sent by first class mail, and/or via facsimile to all persons on the attached mailing list.



David F. Brown

MAILING LIST

GREEN VALLEY SUD

TCEQ DOCKET NO. 2010-0994-DIS; INTERNAL CONTROL NO. 09232009-D01

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TCEQ Docket No. 2010-0994-DIS; Reply of Zipp Meadows, LLC
To the Responses of the Executive Director, Public Interest Counsel,
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